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September 27, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

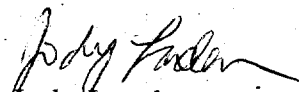
RE: CC Docket No. 96-113

Dear Mr. Caton,

Enclosed please find an original and ten copies of the comments of Working Assets Funding Service, Inc. on the Identification And Elimination Of Market Entry Barriers For Small Businesses. A copy of this filing also has been sent to the Commission's copy contractor, and a diskette has been sent to the Commission's Office of Communications Business Opportunities.

Working Assets appreciates this opportunity to assist the Commission. If you have any questions, please feel free to contact me at the number listed above.

Sincerely,


Jody London
Director

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Before the
Federal Communications Commission
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In the Matter of)
)
Section 257 Proceeding to)
Identify and Eliminate)
Market Entry Barriers)
for Small Businesses)

CC Docket No. 96-113

Comments of Working Assets Funding Service, Inc.

September 27, 1996

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I. Summary

Working Assets appreciates this opportunity to help the Federal Communications Commission ("Commission") identify and eliminate market entry barriers for small businesses. Working Assets finds that the Commission's August 1, 1996 *First Report and Order* in the linked proceedings *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers* ("Order") provides useful guidance, particularly where the Commission provides minimum requirements that can serve as the basis for negotiations. Working Assets has found that many economic factors are driven by policy decisions, particularly in the areas of products and services available for resale, and antidiscriminatory policies. Operationally, Working Assets suggests that numbering plans must be administered fairly and efficiently, and that customer information and privacy are crucial to small businesses in their capacities as both wholesalers and customers of larger carriers. From a policy perspective, Working Assets finds that national standards can provide the greatest incentive to small businesses, particularly in the areas of number portability, pricing policy, geographic deaveraging, certification, and traffic compensation.

II. Working Assets Is A Successful Small Telecommunications Company

A. History of Working Assets

Working Assets is a privately held company whose mission is to be an active participant in building a world that is more just, humane and environmentally sustainable. Working Assets seeks to accomplish that mission through its donations-linked and politically-engaged products and by providing customers with ways to be effective citizens and philanthropists. Working Assets is a woman-owned business, with a diverse workforce that is reflective of the population at large. Started in 1985 by its CEO, Laura Scher, Working Assets today employs 75 people.

In 1985, Working Assets introduced the first donations-linked credit card in the country. In 1988, Working Assets began offering long distance telephone service. Just this year, Working Assets introduced paging service and Internet service, as well as its green energy business, which debuted as part of the New Hampshire Retail Competition Pilot Program. Working Assets is one of the few companies in the country that is focused solely on residential and small commercial customers.

As Working Assets introduces new products, it continues its donations-linked marketing program. A portion of Working Assets' revenue is placed in a donations pool for annual distribution. Donations come from the top line (sales), not the bottom line (profits), meaning donations are made whether or not Working Assets earns a profit. Customers can voluntarily round up their monthly bills or authorize Working Assets annually to charge their credit card, with the difference going to the Working Assets donations pool. One hundred percent of the amount donated goes to the non-profit groups. Round-up donations are tax-deductible. Special appeals for round-ups are also made by Working Assets in order to address an immediate need. Since 1986, more than \$7 million has been donated to non-profit groups such as Oxfam America, Rainforest Action Network, Ms. Foundation, Children's Defense

Fund, Natural Resources Defense Council, AIDS Action Council and Amnesty International, among many others. In 1995 alone, Working Assets donated \$2.1 million to thirty-two non-profit groups.

B. Working Assets Makes An Unique Contribution to the Telecommunications Industry

In addition to the donations program described above, Working Assets offers its customers other ways to exercise free speech and diversity of opinion. Each month, the long distance bill features timely issues with the names and telephone numbers of political and business leaders for customers to contact. Customers may make up to two free phone calls per day to targeted decision makers.

Customers also can write to decision makers through Working Assets' well-argued, low-cost CitizenLetterssm. Letters are sent directly to targeted policy makers upon a customer's request. Working Assets also uses a section of the long distance bill to educate customers about current political events and legislation in Congress.

As a small business, Working Assets continually makes a positive contribution to the economy. Over the past few years, as other companies have downsized and laid off workers, Working Assets has continued to hire new employees. We recently spun off our customer services group into a separate company, allowing it to expand its California presence and open a new site. We also recently created a subsidiary for our green electricity business.

Being a small company that is very close to its customers and has low overhead allows Working Assets to take advantage of new technology and regulatory changes more quickly than other companies. Within the past four months, Working Assets has introduced several new products to its long distance customers that until recently required a consumer to seek out several separate vendors. These new products include paging, Internet access, and electricity. We are evaluating when, whether, and where to offer local telephone service, cellular

telephone service and/or personal communications service, as well as video-on-demand and cable. As a small company, we can bring a new product to market very rapidly, thereby offering customers convenience and quick access to recent technological innovations.

III. Factors That Are Needed To Create A Competitive Market

A. Economics

From Working Assets' experience as a small telecommunications reseller, economic factors driven by policy decisions have contributed to our success. These factors center primarily around equal access for all customers to products, services, and rates; and a recognition by policy makers that the lower prices and innovation associated with competition only occur when new entrants are welcomed into the market.

1. All Products and Services Must Be Available For Resale

A key factor in Working Assets' ability to compete in the long distance market has been the level playing field created by the Modified Final Judgment's establishment of access to facilities-based carriers at competitive, non-discriminatory rates. As the FCC moves forward with implementation of the 1996 Telecommunications Act, it must continue to guarantee that small companies will be offered at minimum the same products and services, at the same prices, as larger companies. The Commission's Order should be interpreted broadly to apply to all services and products offered by telecommunications companies, not just those services and products directly used in voice level telephone service; therefore, this guarantee should extend to all new products, like paging, Internet, and wireless technologies.

The August 1 Order correctly rules that any promotional orders must be made available for resale,¹ unless they are of a short-term (no longer than 90 days) duration. We encourage the Commission to monitor closely the implementation of this rule, as companies will most likely look for methods to circumvent it. The anti-competitive aspects of promotions identified by the Commission are very real.

2. Discrimination Stunts Competition

The Commission rightly recognized in the August 1 Order that vendors must not be allowed to discriminate against wholesale customers on the basis of size or other factors.² This is very important for establishing and maintaining a competitive market. One could argue that the wholesale rate a small reseller is charged should be even less than that charged a large commercial customer, as long as the wholesale customer is willing to assume the risk for its end use customers, because the reseller helps the underlying carrier avoid certain costs for marketing, billing, customer service, and overhead.

Facilities-based carriers, especially incumbent local exchange carriers (LECs), but new entrants as well, must not be allowed to withhold critical elements of local service, or price those elements at prohibitive rates. This is an area where the FCC will need to be particularly vigilant as it works with the states to implement the Act. Working Assets applauds the interconnection rules for beginning to identify elements that can be unbundled,³ and for taking a long-run approach to evaluating avoided costs,⁴ but there are other ways that incumbents can discriminate against small carriers. For example, in September 1995, Pacific Bell sent a "Starter Kit For Wholesale Services" to resellers in California. Pacific Bell offered new entrants access to the elements of local telephone service, *except call waiting*. Call waiting is one of the most popular enhanced features, and one that any new entrant will need to offer

¹ FCC *First Report and Order*, August 1, 1996, p. 453.

² *Ibid.*, pp. 415-416, 472.

³ *Ibid.*, pp. 415, 439-440.

⁴ *Ibid.*, p. 436.

at competitive prices if it is going to attract customers. By withholding call waiting, Pacific Bell basically put forward a meaningless offer.⁵

3. Total Element Long Run Incremental Cost Methodology Is Best Way To Encourage New Entrants

The cost methodology adopted in the August 1 Order⁶ is a sound one that the Commission should help the states implement, if they are having difficulty. Backing out those costs the local exchange companies will no longer incur allows new entrants to provide those services to end users at minimal cost. It also creates opportunities for innovation in the nature and delivery of those products and services.

4. Individual Negotiations Are More Successful When There Is A Starting Point

While small companies need the opportunity to negotiate with vendors for better deals where they can best benefit the small companies' particular customer mix, there must be a baseline starting point. Specific circumstances of an individual small business may allow the vendor to offer special contracts that deviate from the approved tariff requirements. Providing a starting point from which firms can negotiate makes it clear to all players that the FCC is serious about continuing to bring innovation and competition to consumers, regardless of size. The default discounts provided in the August 1 Order⁷ will help small businesses in their negotiations with incumbent LECs.

B. Operations

There are two operational areas in particular where Working Assets is concerned that poor policies can adversely influence the competitiveness of small carriers: number plan administration, and customer information and privacy.

⁵ This offer was subsequently withdrawn and has been superseded.

⁶ *August 1 Order*, pp. 328-343.

⁷ *Ibid.*, p. 444.

1. **Numbering Plans Must Be Administered Fairly And Efficiently**

The assignment of numbers is the key to telephone service, as are issues surrounding area codes. Without a number, and the corresponding tracking system, a customer cannot connect to the telephone network. Thus the prompt assignment of telephone numbers must be a priority, once agreements between carriers are in place.

We are concerned by proposals in some states to move number plan administration responsibilities from the current administrator to the regulatory agencies. Even today there are problems with assignment of new numbers and area code splits. Assigning responsibility for administration of a complex numbering plan program to a regulatory agency seems burdensome, particularly in the current era of smaller budgets, fewer staff, and increasing workloads. If a need exists for replacement administrators, the FCC should assist states and stakeholders in thinking creatively about ways to find or create independent, private organizations that can resolve number assignment and area code issues quickly and efficiently, without involvement in extraneous issues.

2. **Customer Information And Privacy Affect Small Businesses In Their Capacities As Both Wholesalers And Retailers**

Customer information and privacy is important to small companies in their capacities as both wholesaler and retailer. As a retailer, a small company has valuable information about individual customers that is, in many instances, proprietary. Important policy questions surrounding who has this information, and how it is used, should be considered in the context of small companies. If a facilities-based carrier takes information about another company's customers, regardless of size but particularly if it is a small company, and uses it without authorization for its own marketing or other business activities, there are obvious competitive concerns.

From the perspective of a reseller, there are many points in the chain of customer acquisition at which valuable customer information passes through potential competitors. The company that acquires the customer should have access

to that information as soon as it is available. An example is in long distance resale today, when a customer notifies the local exchange carrier that they are moving or changing part of their basic service account. Because of the delays in transferring information, the long distance carrier often is not aware of changes in the customer's status until several weeks later, by which time the customer has a new phone number. As local telephone companies begin obtaining authorization for long distance affiliates, this issue becomes even more important. The first entity a local exchange company should be required to notify of changes is the customer's long distance carrier; the LEC should not be permitted subsequently to make this type of information available to any other carrier unless it is making it available to all carriers simultaneously.

This concern about customer information and privacy also extends to facilities-based interexchange carriers (IXCs), to the extent that small resellers purchase space from them, and the IXCs need certain portions of customer-specific information in order to provide service. It also particularly extends to the long-distance affiliates of local exchange companies.

A final area of concern about customer information involves how companies can use information about their customers. Applying limits in too stringent a fashion could be very detrimental to small businesses, who tend to be in fairly close communication with their customers and are very aware of their customers' needs. One of the benefits for a customer of choosing a small business is the targeted service the business provides. Eliminating the ability of small businesses to respond to their customers could undermine the business' ability to continue to be competitive.

C. Policy

1. National Standards Encourage Small Businesses to Enter the Market

Working Assets understands the Commission's desire to work with the states in bringing competition to the local telephone market, and to allow for geographic, demographic, and economic differences between states. We continue to find, however, that complying with different requirements in fifty states can pose a significant barrier to entry for small businesses. Small businesses cannot support large regulatory staffs in their main offices, let alone establish satellite offices throughout the country to track the activities of and intervene before each state commission.

A cursory look at the discounts authorized in a few states helps illustrate the challenge for small businesses trying to provide service on a national basis. In California, interim rates set in March establish different discounts for residential (10 percent for Pacific Bell, 7 percent for GTE) and business (17 percent for Pacific Bell, 12 percent for GTE) wholesale rates, and different discounts between the two major local exchange carriers. Permanent wholesale discounts authorized in Georgia in May are 17.3 percent for residential and 20.3 percent for business.⁸ Texas has proposed an interim wholesale discount of 5 percent for both groups, while Tennessee's proposal is 25 percent for both groups,⁹ and Illinois' is 22 percent.

There are several areas in particular where national standards can make entry more realistic for small carriers. These areas include number portability, pricing, certification, and traffic compensation.

⁸August 1 Order, p. 441.

⁹Telecommunications Resale Report, July 8, 1996, p. 7.

a) True Number Portability Allows Customers to Participate More Fully in Local Competition

Achieving true number portability as soon as possible is important to competition. The interim methods that have been adopted to date are laden with transaction costs. For example, in California if a customer wants to keep his or her number, the customer must pay for remote call forwarding. There also can be situations where the margins for reselling number portability seem fine, but there are large line installation charges required that eliminate any opportunities to offer the service competitively.¹⁰ True number portability would eliminate these costs, which are inefficient for the system as a whole. It potentially also would cut down on the need for as many interactions with the number plan administrator, and thereby eliminate some of the concerns outlined above.

b) Pricing Policies Affect the Ability of Small Companies to Compete on a National Basis

The Commission's August 1 Order addressed Working Assets' concerns about pricing. We recognize the usefulness of providing states with the latitude to develop rules unique to the circumstances in each state. However, given Working Assets' concern about tracking and complying with different cost regimes in each state, not to mention for the many local exchange carriers within each state, the Commission's establishment of minimum standards is very useful. As the Commission monitors implementation of the Order, it should be aware of the value that uniform pricing holds for small businesses. Uniform pricing allows small carriers to more easily compare product offerings from vendors, and it helps avoid filing additional tariffs and paperwork. Furthermore, pricing policies should be consistent across telecommunications technologies, e.g., paging, wireless, and, to the extent it is regulated, Internet.

¹⁰ Southern New England Telephone at one point telephoned Working Assets to offer us this option.

c) Geographic Deaveraging Should Be Phased In

Another area of pricing regards geographic deaveraging. As pointed out above, large differences exist today in the pricing and the terms and conditions offered by different companies in each state. While moving to geographic deaveraging of rates may help send more accurate price signals, it should happen in a measured fashion, over an extended period of time. The more complex the implementation, the more opportunities that exist for delay, and the larger the burden for small companies trying to track these developments.

Perhaps more importantly, an immediate deaveraging of rates would create large spikes in telephone bills for some residential customers. These spikes likely would be regressive, affecting customers with low and/or limited incomes who can least accommodate an additional cost in their monthly budgets. To avoid this type of rate shock, Working Assets encourages the Commission to phase in geographic deaveraging gradually.

d) Standardized Certification Can Accelerate Entry of New Providers

Working Assets has concerns about certification procedures differing between states. Here it would be particularly easy for the FCC to establish guidelines, or even policies of reciprocity, that allow a small business to serve in any state once it has received certification. Speaking from our own experience, it took us four years to obtain certification in all the states that regulate switchless resellers; some states took up to three years to process fully completed applications. The FCC should look to other licensing models that allow companies or individuals reciprocity if they have met certain financial and operational minimum standards.

e) Traffic Compensation Methodology Can Create Additional Barriers To Entry

Working Assets applauds the Commission's decision in the Order to adopt a forward-looking economic cost methodology for traffic compensation. Small

businesses are particularly hard hit when they must pay twice for the same product or service. The Commission should maintain this commitment to sound economic policy, and ease of administration, as it moves forward with implementing the Act. Keeping traffic termination simple and less costly is the best way to bring small business traffic to the system.

2. Policies Must Be Implemented In Ways That Encourage Small Businesses

A final area where sound policy decisions at this time will greatly assist small businesses in the future is the way policies are implemented. Particularly as enhanced services and new products are introduced, they need to be made available to all providers at the same costs, at least for purposes of commencing negotiations. Small businesses, as non-monopolists, can be incredibly innovative and quick to take advantage of market developments.

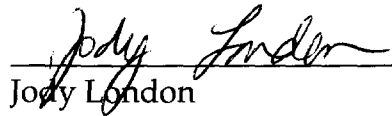
Working Assets is looking for the right opportunity to do this, but has not found it yet. We thought that we had found the right opportunity with Southern New England Telephone (SNET), which announced last spring a "path-breaking" package for resellers of local service. Upon further conversation, this "bargain" offer, which unbundled the elements of local service, rebundled them so that the total wholesale charge to the reseller exceeded what SNET customers pay currently for local service. This clearly is not what either Congress or the FCC intended.

IV. Conclusion

Working Assets is a socially responsible telecommunications reseller that brings diversity and product differentiation to residential and small business customers. Working Assets has benefited from the level playing field established for long distance resale, and is hopeful that the policies established in the August 1, 1996 Order will allow Working Assets to continue to work with our customers and our vendors to bring new products and services to the market quickly and cost

effectively. The Commission will need to work closely with the states, and monitor their implementation of the rules. Too much variation across states will make it difficult for new entrants to serve all segments of the country, and of the market. LECs and other facilities-based carriers must offer all products and services to all market participants at the same rates, at the same time, and in the same manner. Numbering plans must be administered fairly and efficiently. Small businesses must be allowed to use information about their customers to continue bringing those customers the products and services they desire. At the same time, other companies must not be allowed to use information they may acquire in the wholesale provision of products and services in an anticompetitive manner. Small businesses have been key in bringing customer choice to all customers, and will continue to do so if the Commission's policies and rules are implemented properly.

Respectfully submitted,



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